Ganesan a/l Nachiappan & Ors v Public Prosecutor

COURT OF APPEAL (KUALA LUMPUR) — CRIMINAL APPEALS NO J–05–39 OF 1997 AND J–05–40 OF 1997
LAMIN PCA, NH CHAN AND HAIDAR JJCA
26 APRIL 2000

Criminal Procedure *— Sentence — Appeal against sentence — Serious injuries inflicted — Discretion of trial court in sentencing — Factors to be considered — Whether appellate court should intervene*

The appellants pleaded guilty to the amended charge under s 304 (first limb) of the Penal Code and were sentenced to 14 years' imprisonment. The appellants appealed against the sentence.

Held, dismissing the appeal:

(1) The power of sentencing given to a trial court is a discretionary one and in order for the appellate court to disturb the sentence imposed, the court must be convinced that the trial judge had erred in applying the correct principles of sentencing or had embarked on some unauthorized or extraneous exercise of discretion. In the present case, the trial judge in his judgment had given due consideration, inter alia, to the plea of guilty, the ages of the appellants and the period they were remanded before passing the sentence on them (see p 246B–C).

(2) The injuries inflicted on the deceased were serious. The trial judge was right to take into account the public interest element in view of the seriousness of the offence committed by the appellants. The trial judge had properly exercised his discretion in imposing the sentence and there were no grounds for the court to interfere with it. The sentence was not manifestly excessive given the facts of the case and the serious injuries (see p 246F–H).

[Bahasa Malaysia summary

Perayu-perayu telah mengaku bersalah terhadap pertuduhan yang dipinda di bawah s 304 (bahagian pertama) Kanun Keseksaan dan telah dijatuhkan hukuman penjara selama 14 tahun. Perayu-perayu telah merayu terhadap hukuman tersebut.

Diputuskan, menolak rayuan tersebut:

(1) Kuasa menjatuhkan hukuman yang diberikan kepada mahkamah perbicaraan adalah berdasarkan budi bicara dan bagi membolehkan mahkamah rayuan campur tangan dalam hukuman yang dikenakan, mahkamah mestilah berpuas hati bahawa hakim perbicaraan tersebut telah salah menggunakan prinsip-prinsip menjatuhkan hukuman yang betul atau telah mengambil beberapa penggunaan budi bicara yang tidak

A diberi kuasa atau tidak berkaitan. Dalam kes ini, hakim perbicaraan di dalam penghakiman beliau telah memberikan pertimbangan yang sewajarnya, antara lain, kepada pengakuan bersalah, umur perayu-perayu tersebut dan tempoh mereka telah ditahan sebelum hukuman dijatuhkan ke atas mereka (lihat ms 246B–C).

B (2) Kecederaan-kecederaan yang dialami pada si mati adalah serius. Hakim perbicaraan adalah betul untuk mengambil kira elemen kepentingan awam berdasarkan keseriusan kesalahan yang dilakukan oleh perayu-perayu tersebut. Hakim perbicaraan telah menggunakan budi bicara beliau dengan betul di dalam C mengenakan hukuman tersebut dan tiada alasan bagi mahkamah untuk campur tangan dalam hal tersebut. Hukuman tersebut tidak nyata keterlaluan berdasarkan fakta-fakta kes dan kecederaan-kecederaan serius tersebut (lihat ms 246F–H).]

D **Notes**

For cases on appeal against sentence, see 5 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 2516–2538.

Cases referred to

E *Bhandulananda Jayatilake v PP* [1982] 1 MLJ 83 (refd)
PP v Loo Choon Fatt [1976] 2 MLJ 256 (refd)

Legislation referred to

Penal Code ss 34, 302, 304

F **Appeal from:** Criminal Trial No 45–13 of 1996 (High Court, Johor Bahru)

Karpal Singh (*Karpal Singh & Co*) for the appellant in Criminal Appeal No J–05–39 of 1997.

K Muniandy (Deputy Public Prosecutor, Attorney General's Chambers) G for the respondent in Criminal Appeal No J–05–39 of 1997.

K Muniandy (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant in cross appeal in Criminal Appeal No J–05–40 of 1997.

Karpal Singh (*Karpal Singh & Co*) for the respondent in cross appeal in Criminal Appeal No J–05–40 of 1997.

H **Haidar JCA** (delivering judgment of the court): All the six appellants were originally charged for an offence under s 302 of the Penal Code read with s 34 of the Penal Code. Midway through the prosecution case, the learned deputy public prosecutor amended the charge to one under s 304 (first limb) read with s 34 of the Penal Code. All the appellants pleaded guilty to the amended charge (exh P51) after they understood the nature and I consequences of their pleas. The facts of the case were presented by the learned deputy public prosecutor (exh P52). All of them admitted to the correctness of the facts.

After hearing the mitigation put forward by their respective counsel the learned judge sentenced each of them to fourteen years' imprisonment to take effect from the date of their respective arrest.

The appeal is in respect of their sentence only. There is a cross-appeal by the public prosecutor against their sentence.

As the appeal is against sentence and the facts are fully stated in exh P52 (pp 358 to 361 of the appeal record) we do not propose to set them out here.

The power of sentencing given to a trial court is a discretionary one and in order for us, as the appellate court, to disturb the sentence imposed, we must be convinced that the trial judge had erred in applying the correct principles of sentencing or had embarked on some unauthorized or extraneaous exercise of discretion (see *PP v Loo Choon Fatt* [1976] 2 MLJ 256 and *Bhandulananda Jayatilake v PP* [1982] 1 MLJ 83).

The learned judge in his judgment had given due consideration, inter alia, to the plea of guilty, the ages of the appellants and the period they were remanded before passing the sentence on them (p 263 of the appeal record). As regards the ages of the appellants and their lack of maturity in committing the offence, this is what the learned judge said at p 205 of the appeal record:

> Peguam-peguam yang mewakili mereka masing-masing telah membuat rayuan meringankan hukuman dan di antara faktor yang diutamakan bagi tujuan ini adalah mereka masih muda pada hari kejadian itu dan tidak berfikir secara matang atas perbuatan mereka. Mengenai faktor ini, saya berpendapat tindakan mereka menetak si mati tidak menunjukkan mereka kurang matang pada hari kejadian itu. Mereka telah pergi ke rumah simati dengan membawa senjata dan telah bersedia untuk menggunakan kekerasan ke atasnya. Kesan-kesan luka tetakan pad a badan si mati, yang mana menurut laporan bedah siasat berjumlah 45, menggambarkan mereka mempunyai sikap penjenayah yang bersedia mengganas dan tidak berperikemanusiaan. Di samping itu saya mendapat, memandangkan kesalahan ini telah dilakukan bersama-sama, ini menunjukkan mereka telah membuat rancangan sebelum melakukannya.

The injuries inflicted on the deceased were serious. There were altogether 45 stab wounds. The gory photographs at pp 285 to 288 of the appeal record clearly showed the seriousness of the injuries. The deceased was badly disfigured. The learned judge was therefore right to take into account the public interest element in view of the seriousness of the offence committed by the appellants.

In our view, the learned judge had properly exercised his discretion in imposing the sentence and there were no grounds for us to interfere with it. The sentence was not manifestly excessive given the facts of the case and the serious injuries. The appeal was therefore dismissed and we affirmed the sentence.

As regards the cross-appeal by the public prosecutor, we were of the opinion that the sentence imposed is not manifestly inadequate for the reason that the learned judge had properly exercised his discretion and he had taken into account the interests of the appellants and balanced them

with the public interest. In the circumstances we should not disturb the sentence imposed. The cross-appeal was accordingly dismissed.

Appeal dismissed.

Reported by Jafisah Jaafar